

§ 843.22

abatement plan or payment schedule is entered into, or the permittee and all persons owned or controlled by the permittee are no longer responsible for the violation, penalty, or fee. Under this paragraph, good cause does not include the lack of State program equivalents of §§ 773.20 and 773.21 of this chapter.

(e) *Remedies to notice of violation.* Upon receipt from any person of information concerning the issuance of a notice of violation under paragraph (d) of this section, OSM will review the information and:

(1) Vacate the notice of violation if it resulted from an erroneous conclusion under this section; or

(2) Terminate the notice of violation if:

(i) All violations have been abated and all penalties or fees have been paid;

(ii) The permittee or any person owned or controlled by the permittee has filed and is pursuing a good faith appeal of the violation, penalty, or fee, or has entered into and is complying with an abatement plan or payment schedule to the satisfaction of the responsible agency; or

(iii) The permittee and all persons owned or controlled by the permittee are no longer responsible for the violation, penalty, or fee.

(f) *No civil penalty.* OSM will not assess a civil penalty for a notice of violation issued under this section.

[62 FR 19461, Apr. 21, 1997]

§ 843.22 Enforcement actions at abandoned sites.

The Office may refrain from issuing a notice of violation or cessation order for a violation at an abandoned site, as defined in § 842.11(e) of this chapter, if abatement of the violation is required under any previously issued notice or order.

[53 FR 24882, June 30, 1988]

§ 843.24 Oversight of State permitting decisions with respect to ownership or control or the status of violations.

(a) The Office shall take action pursuant to paragraphs (b) and (c) of this section whenever it determines, through its oversight of the implementation of State programs, that a State has issued a permit without complying

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with the State program equivalents of §§ 773.22, 773.23, 773.24, 773.25, and 843.23 of this chapter.

(b) If, as a result of its determination that a State has failed to comply with the provisions set forth in paragraph (a) of this section, the Office has reason to believe that the State has issued a permit improvidently within the meaning of § 773.20 of this chapter, the Office shall initiate action under the provisions of § 843.21 of this part.

(c) If the Office determines that a State's failure to comply with the State program equivalents of §§ 773.22, 773.23, 773.24, 773.25, and 843.23 of this chapter was knowing, it shall initiate action under §§ 735.21 or 886.18 (as allowed by law) and/or § 733.12(b) of this chapter, unless the State's action was the result of a mandatory injunction of a court of competent jurisdiction.

[59 FR 54356, Oct. 28, 1994]

§ 843.25 Energy Policy Act enforcement in States with approved State programs.

(a) *State-by-State determinations.* By July 31, 1995, OSM will determine for each State with an approved State regulatory program whether:

(1) Direct Federal enforcement of the Energy Policy Act and implementing Federal regulations will occur under paragraph (b) of this section with respect to some or all surface coal mining operations in each State, or

(2) The procedures of §§ 843.11 and 843.12(a)(2) will apply to State enforcement of the Energy Policy Act, or

(3) A combination of direct Federal enforcement and State enforcement will occur.

(4) Before making this determination, OSM will consult with each affected State and provide an opportunity for public comment. OSM will publish its determination in the FEDERAL REGISTER.

(b) *Interim Federal enforcement.* (1) If OSM determines under paragraph (a) that direct Federal enforcement is necessary, §§ 817.41(j), 817.121(c)(2), and 817.121(c)(4) of this chapter will apply to each underground mining operation subject to that determination that is conducted in a State with an approved State regulatory program.